

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re application of

NJSC NAFTOGAZ OF UKRAINE

For an Order Under 28 U.S.C. § 1782  
for Issuance of a Subpoena to GLAS Americas  
LLC

Misc. Civil No. \_\_\_\_\_

**Application for an Order to Conduct Discovery for  
Use in Foreign Proceedings Under 28 U.S.C. § 1782**

NJSC Naftogaz of Ukraine (“Naftogaz”) hereby applies to this Court for an ex parte order authorizing it to conduct discovery under 28 U.S.C. § 1782. Specifically, Naftogaz, a Ukrainian oil and gas company, respectfully requests the Court to authorize the service of a subpoena upon GLAS Americas LLC (“GLAS Americas”) seeking documents and deposition testimony in support of judicial proceedings that Naftogaz is preparing to file in Switzerland.

As explained in the accompanying memorandum of law, the facts upon which Naftogaz bases this application are set forth in the accompanying Declaration of Fabio Spirgi, dated December 5, 2018 (hereinafter, “Spirgi Declaration”), and the exhibits thereto. A short summary of those facts follows below.

1. On February 28, 2018, an arbitral tribunal seated in Stockholm, Sweden, and presiding over a commercial dispute between Naftogaz and the Russian oil and gas company PJSC Gazprom (“Gazprom”) issued an award ordering that Gazprom pay Naftogaz approximately \$2.56 billion—\$2,560,332,662.77 to be exact—in damages (the “Award”). Spirgi Declaration, at ¶ 6.

Naftogaz has since commenced judicial proceedings in Switzerland in aid of its efforts to recognize and enforce the Award—which Gazprom to this date has refused to pay—against certain of Gazprom’s Swiss assets. Spirgi Declaration, at ¶ 7. Naftogaz also intends and is in the midst of preparing to commence additional proceedings in Switzerland to further aid its recognition and enforcement efforts, including proceedings in which Naftogaz seeks to attach Gazprom’s shares—more specifically, the physical share certificates—in one of Gazprom’s wholly owned Swiss subsidiaries, a pipeline company called Nord Stream 2 AG (“Nord Stream 2”). Spirgi Declaration, at ¶¶ 9-22.

2. Naftogaz seeks discovery under Section 1782 from GLAS Americas, a New York limited liability company headquartered in Manhattan, in support of the Swiss proceedings that Naftogaz is preparing to file. GLAS Americas is an affiliate of GLAS Trustees Ltd., a provider of finance-administration services that is incorporated in England and Wales. According to Gazprom’s 2017 financial statement, Gazprom had as of that year pledged its shares in Nord Stream 2 to GLAS Trustees Ltd. Naftogaz reasonably believes, however, that GLAS Trustees Ltd. does not actually hold Gazprom’s physical share certificates in Nord Stream 2, and that the share certificates are located in Switzerland. Naftogaz therefore seeks discovery of GLAS Trustees Ltd.’s U.S. affiliate, GLAS Americas, in order to discover evidence of the location of the shares.

3. GLAS Americas and GLAS Trustees Ltd. are closely connected and share common senior leadership. Specifically, Brian Carne is the Co-Chair of and General Counsel for GLAS Trustees Ltd. and also Chairman of GLAS Americas (as well as its contact specified for service of process through the New York Department of State). Given the close relationship between GLAS Americas and GLAS Trustees Ltd., GLAS Americas likely possesses information related to the location of the Nord Stream 2 shares that Naftogaz requires in aid of its efforts to recognize and

enforce the Award in Switzerland. Spirgi Declaration, at ¶21. As noted, Naftogaz seeks this evidence for use in the contemplated attachment proceeding in Switzerland, in which information about the location of Gazprom's shares in Nord Stream 2 would play a crucial part. Spirgi Declaration, at ¶ 22.

4. Due to the limitations of Swiss civil discovery, the fact that GLAS Americas would not be party to the contemplated Swiss proceeding, and the fact Swiss courts do not have jurisdiction over GLAS Americas, the Swiss courts lack the ability to compel GLAS Americas to provide the documents and information that Naftogaz now seeks in the United States. Spirgi Declaration, at ¶31. The requested information constitutes evidence that is otherwise unavailable to Naftogaz and is crucial to its ability to vindicate its rights in the Swiss proceedings. Spirgi Declaration, at ¶ 21.

5. Although the discovery Naftogaz seeks would be unavailable to it in the Swiss proceedings, Swiss courts are nonetheless receptive to the evidence obtained via 28 U.S.C. § 1782 discovery. Spirgi Declaration, at ¶ 34.

6. As set forth in the accompanying memorandum of law, this application meets the statutory requirements of Section 1782. The factors articulated in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004), also strongly weigh in favor of the Court exercising its discretion to grant this application.

7. Also, courts frequently issue orders granting Section 1782 applications on an ex parte basis. See, e.g., *In re Application of Guy*, 2004 WL 1857580, at \*1 (S.D.N.Y. Aug. 19, 2004); *In re Application of Hill*, 2005 WL 1330769, at \*1 (Jun. 3, 2015); *In re Application of Gemeinschaftspraxis Dr. Med. Schottdorf*, 2006 WL 3844464, at \*3 (Dec. 29, 2006). It is “neither uncommon nor improper” to do so, because respondents “can later challenge any discovery request

by moving to quash" or modify the subpoenas; accordingly, their "due process rights are not violated" by an ex parte order. *Gushlak v. Gushlak*, 486 Fed. App'x 215, 217 (2d Cir. 2012).

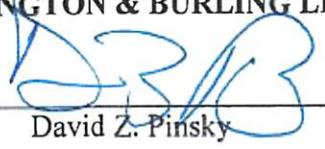
8. Accordingly, Naftogaz respectfully requests that the Court grant this ex parte application and authorize Naftogaz to serve a subpoena upon GLAS Americas in the form attached as Exhibit 1 to the Declaration of David Z. Pinsky, dated December 5, 2018.

Dated: December 5, 2018  
New York, New York

Respectfully submitted,

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